Supreme Court, U.S.
FILED

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In The

OFFICE OF THE CLERK

Supreme Court of the United States

HASSAN VAZIN

Petitioner

v.

TENNESSEE STATE UNIVESITY, et al.

On Petition For Writ Of Certiorari
To The US Court Of Appeals For The sixth Circuit

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42 pp

QUESTIONS PRESENTED

Please note that the background for Questions Presented are briefed on pages 1-12

Question 1: Shouldn't a summary judgment that relies on plaintiff's failure to provide supportive documents (i.e. depositions, affidavits, etc.) be labeled invalid if the failure to present the supportive document is the result of a wrong directive by a court official?

Question 2: Is a summary judgment that is ordered without giving opposing sides a chance to submit their arguments (i.e. engage in discovery) valid?

Question 3: In a case that is comparable to the classic "He Said-She Said" case, does any court have a right to assert, without a trial or solid proof, that one side's version of the events is truthful at the expense of the opposing side?

Question 4: Does the EQUAL PAY ACT ("EPA") of 1963 apply equally to the male population?

Question 5: Should "On-the-Job performance" be among the factors considered when evaluating an EPA charge?

Question 6A: Is it legal to share, in secret, a document, which is clearly marked confidential and is addressed to a specific person, without permission from the author? In particular, when the document, in despite of clear intentions of the author, is shared with people (or organizations) against whom the document were drafted?

Question 6B: Is an organization (or a person) whose act of sharing a confidential information results in harming the author of the confidential information legally liable for damages?

Question 7: Conspiracy is defined as a planned act of two or more parties against the third. The legal definition of the planning parties is under question. Can two independent organizations, working

under the same umbrella, be considered, legally speaking, as the two planning parties in a conspiracy charge?

Question 8: In assessing a retaliation case that hinges on intentional salary reduction, can salary calculation be independent of the length of the time that one is forced to work? (In other words, when an employer pays a sum of $X for, say, 8 months of employment one year and offers the same sum of $X for 9 months of employment the following year to the same employee, can the employer, legally speaking, claim that salaries were the same?)

Question 9: Is it legal to advertise nationally for an employment position, offer the position to a qualified applicant, and then refuse to pay the employee a salary in line with the advertisement?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Tennessee State University (TSU)
Tennessee Board of Regents (TBR)

Both TSU and TBR are organizations of State of Tennessee and are represented by: Mr. Donald Ungurait, Office of Attorney General, Cordell Hull Building, 425 Fifth Ave. North Nashville, TN 37243

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TABLE OF AUTHORITIES CITED

CASES:

Anderson v. Liberty Lobby 477 U.S. 242, 247-52, 106 S.Ct. 2502, 91 L.Ed.2d 202 (1986)

Bence v. Detroit Health Corp., 712 F.2d 1024, 1028 (6th Cir. 1983)."

Duchon v. Cajon Co. 791 F.2d 43,46 (6th Cir. 1986)

Jones v. Westside Urban Health Ctr., Inc., 760 F.Supp.1580 (S.D. Ga.1991)

STATUES AND RULES:

Title 29, Section 26US Code
EQUAL PAY ACT of 1963
COPYRIGHT LAWS

OTHER:

EEOC COMPALIANCE MANUAL (dated 12/05/2000)

IN THE
SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. Judges: Martin, Keith and, Kennedy.

The order of summary judgment by the United States district court appears at Appendix B. Judge: William J. Haynes.

JURISDICTION

The date on which the United States Court of Appeals decided my case was June 14, 2002.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The original petition was filed on September 9, 2002 and was received by the clerk's office on September 14, 2002. The petition was returned for corrections.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Equal Pay Act of 1963
Title 29, Section 26US Code
Copyright laws
Conspiracy
Title 31 US Code (False Claims Act or Whistle Blower Laws)
Employee Protection Laws

STATEMENT OF THE CASE

In the case of Vazin v. TSU et al. justice did not prevail and important legal questions that have national implications remained unanswered. In the following Petitioner, after important introductory remarks, discusses only those parts of the case that are relevant to Questions Presented.

Why Without A Lawyer?

Before filing his lawsuit at District Court of Middle Tennessee in Nashville, Petitioner had to face the reality that lawyers in the Nashville area were not interested in taking a case against TSU (Tennessee State University)[1]. The lawyers argue that when it comes to TSU, government and judicial systems look the other way! Review of the Courts' [2]decisions in the case of Vazin v. TSU et al. results, unfortunately, in the conclusion that the lawyers have been right! Particularly, one can point out to the order of summary judgment that overlooks Petitioner's clear and deterministic evidences, accepts and relies on untrue version of the events as told by Defendants and, fails to give opposing sides an opportunity to present their arguments on certain claims.

District Court's Wrong Directive!

Importantly, while filing the lawsuit, Petitioner asked an official of the district court procedural questions that included the timeline for gathering depositions. In reply the court official advised: "you have to wait to see if the case doesn't get dismissed". To the question of chances for getting a court-appointed lawyer, the reply was: "you have to wait to see if the case doesn't get dismissed. You can ask for one but in civil cases the court normally doesn't assign a lawyer". Based on this directive, Petitioner waited for the recommendation of a magistrate judge who was assigned to review the validity of claims. However, instead of the recommendation of the magistrate judge, the order of summary judgment was issued. Ironically, the summary judgment points to failure of Petitioner to support his claims through

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[1] Other TSU faculty members have reported the same experience.

[2] "the Courts", throughout this document, refers to District Court of Middle Tennessee (Nashville) and Court of Appeals for the Sixth Circuit.

depositions, affidavits, etc. Naturally, a person who is not skilled in the legal procedures takes the advise of a court official to the heart. Clearly, the court official's wrong directive contributed to the lack of depositions, affidavits, etc. in this case. Petitioner believes that in the interest of fair justice, he should have been given another chance to prepare and submit supportive documents.

Trivialization of the Case by the Courts!

There is a lot more to this case than Questions Presented. For the sake of completions, and to be on the record, it is essential to analyze segments of the case that the Courts have cared to address.

The Courts, in addressing Petitioner's claim of discriminations for not being selected for a tenure track position have argued that Petitioner has met some but not all of prima facie conditions (i.e. Petitioner not having a degree in computer science). This rather superficial argument ignores that fact that department of computer science at TSU, based on being fully satisfied with Petitioner's performance, professionalism, knowledge and, experiences asked Petitioner to apply for the advertised position. This followed by selecting Petitioner over all other applicants for the position (initially). However, as the records filed with the district court and the court of appeals reflect, at the end TSU selected a person who was voted unqualified by the selection committee, had no legal permission to work in this country, was not even interviewed for the position and, in despite of TSU's requirements, was not even asked to submit a copy of his transcripts. Cases end up in courts because of their "Gray Areas". This case is no exception. An impartial court did not have to look hard to find plausible causes in this case.

This is a case that goes back over a decade, includes elements of repeated discrimination, retaliation, abuse, conspiracy and more. In the interest of justice, a fair-minded court should have taken the case more seriously and should have looked at this case, and all its interrelated and complex elements, as a whole.

The Court of Appeals

In protesting the questionable order of summary judgment to the court of appeals for the sixth circuit, Petitioner provided point-by-point and detailed argument, presented evidences and, by the way of comparison (please see Appendix C) showed how justice pendulum can swing from one side to the other depending on whose version of the events a court decides to accept as the truth.

In addition, and to specifically stress the shortcomings of the summary judgment, Petitioner asked the court of appeals for opinion on a few related-to-the-case legal questions. However, the order of the court of appeals essentially repeats the text of the summary judgment, selectively ignores vital issues, and does not answer any of the legal questions!

Specifics of the Case

One can divide this case into the following interrelated elements:

- Violation of the Equal Pay Act (defendant TSU).
- Repeated employment discrimination (defendant TSU).
- The criminal act of secretly sharing Plaintiff's confidential letters (defendant TBR).
- The criminal act of conspiracy against Plaintiff (defendants TBR and TSU).

Since the explanation of the entire case is rather lengthy and because a detailed explanation is at the possession of the Courts, Petitioner limits this pages by discussing the background for Questions Presented.

Background for Question 1

Please refer to the explanation under Court's Wrong Directive title on page 1.

Background for Questions 2 and 3

When a court, in its decision making process, relies on untrue version of events as told by one side, ignores evidences and,

makes its decision without allowing opposing sides a chance to present their arguments, the credibility of the decision maybe questioned. To be specific, the district court in a hasty decision about Petitioner's claim of violation of Equal Pay Act (please see the explanation under Background for Questions 4 and 5) did not give opposing sides a chance to present their arguments.

Another example of the shortcomings of the court's orders is the fact that the district court accepted (and relied upon) Defendants' claim that in August 1999 Petitioner had agreed to a semester contract at a salary of $17,000. Although Petitioner repeatedly warned the court that this never happened (please see appendix C), the district court never asked Defendants for a document, bearing Petitioner's signature, in support of their claim. Petitioner provided a signed letter from TSU official that contradicted Defendants' claim. Effectively, Petitioner's evidence proved that Defendants have submitted false information to the court (i.e. they lied!). Yet the Courts ignored this vital and deterministic fact. On one hand the Courts argue that Petitioner has not presented supportive documents and on the other hand the Courts ignore clear and deterministic evidences. An objective court finds punishment for injustices done while a subjective court finds ways to deny injustices were done.

What happened here (referring to the district court's wrong directive) was like directing a blind into a ditch and then blaming the poor person for not having a cane. The result was severe for the Petitioner who could have had, otherwise, a chance for a real trial. A non-legal person, forced to self- representation, is already at disadvantage when it comes to legal procedures, Court's blue book (primarily drafted for lawyers) is not much of a help and, other lawyers refuse to give advise because of the potential liability. In the mix of this already confusing stuff, the last thing that a person needs is to hear wrong directive from a court official. The court official's advise contributed to the inadequate presentation by Petitioner and the court, in the interest of justice, must accept the responsibility.

REASONS FOR GRANTING THE WRIT
(Questions 1, 2 and, 3)[3]

Anderson v. Liberty Lobby 477 U.S. 242, 247-52, 106 S.Ct. 2502, 91 L.Ed.2d 202 (1986), Duchon v. Cajon Co. 791 F.2d 43,46 (6th Cir. 1986) and other cases advise that a court before deciding on a summary judgment must give opposing sides an opportunity to engage in discovery. Obviously, in the case of Vazin v. TSU et al., the mentioned wrong directive of the district court, in effect, denied Petitioner an opportunity to engage in discovery[4].

The premise of a properly executed summary judgment is to view facts in light most favorable to the nonmoving party. This premise is not fulfilled when a court ignores facts that do affect the outcome (in favor of the nonmoving party).

Apparently, a proper legal procedure is to give opposing sides 30 days each to submit their arguments after a motion is granted. This procedure was not followed[5].

The national implications of questioning the extent of courts' power in dismissing cases through improper summary judgments are clear. Granting the Writ or sending the case back to a lower court for trial is only a fair justice.

Background for Questions 4 and 5

These related questions have emerged because three legal institutions (i.e. EEOC[6], District Court and, Court of Appeals) have three contradictory readings on the EQUAL PAY ACT (EPA) of 1963 as explained below:

US district court granted Petitioner's motion to add discrimination charge based on EPA. Specifically, Petitioner compared his salary with that of a lower ranked and openly

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[3] Because of independency of questions (or a set of questions), Reasons For Granting The Writ is presented for each (or each set) of questions.
[4] In the form of depositions, affidavits, etc.
[5] Please refer to the discussion for Questions 4 and 5
[6] Equal Employment Opportunities Commission.

unqualified female comparator and claimed that he has been the subject of a sex-based discrimination. However, in rejecting the claims, only one week after the motion was granted, the district court states the following:

"Finally, after a review of the record the plaintiff's motion to add a Equal Pay Act ("EPA") claim was granted, but the facts clearly show that claim to be without merit. The EPA was intended to protect female employees. Bence v. Detroit Health Corp., 712 F.2d 1024, 1028 (6th Cir. 1983)."

This statement, clearly, contradicts itself! On one hand review of the record (i.e. merits of the claim) results in granting the motion, and on the other hand, the court notes a clear lack of merit and makes a controversial statement to imply that the law applies only to the female population. The statement of the law (i.e. Title 29, Section 26US Code) does not negate the right of male population to seek justice when subjected to EPA violation. Additionally, District Court refers to some unknown "facts" to find the claim to be without merit! Considering that the opposing sides were not given a chance to present their arguments, the unspecified "facts" makes the basis of the court's decision a mystery.

Petitioner in his appeal documents by referring to EEOC COMPALIANCE MANUAL (dated 12/05/2000) showed an example where EPA has been applied to a male plaintiff. The cited manual refers to Jones v. Westside Urban Health Ctr., Inc., 760 F.Supp.1580 (S.D. Ga.1991) where a court has voted for a less educated male plaintiff whose EPA charges included a more educated female comparator. Moreover, the same EEOC document in reference to the mentioned "Bence" case summarizes the following:

> (compensation disparity found where employer paid higher rates to males than females, even though total remuneration was substantially equal).

No mention of the limitation of the law to the female population is evident from the summary.

Among the direct questions to the court of appeals was the question of legality of the district court's argument in rejecting the EPA claim[7]. However, the court of appeals refused to address the question. The court of appeals, however, ignoring the facts[8], agreed with the simplistic argument of the defendants that the female comparator was paid higher because of her degree[9]. This is not the same argument as that of the district court and a logical conclusion is that there must be a contradiction between the two courts. Having a specific educational degree, in this case, was overshadowed by the fact that the female comparator was so unqualified that she could not perform her duties. Petitioner even provided evidence: (the female comparator and Petitioner both applied for the same tenure track faculty position in the Computer Science Department at TSU. However, although the female comparator had a degree in computer science, her application was not even considered). Ironically, as was explained under Trivialization of the Case by the Courts (page 1), the Courts used lack of Petitioner's degree in computer science as a reason for him not being selected for the tenure track position. An impartial person quickly finds contradiction and would ask: if a specific degree was important and deterministic, why the female comparator was not even considered for the position?

Additionally, the ruling of the court of appeals contradicts the cited EEOC case (i.e. Jones v. Westside Urban Health Ctr., Inc.) that makes a reference to the "educational level" of comparators. If "educational degree" by itself is a deterministic factor then EEOC's reference is in error and if "educational degree" by itself is not a deterministic factor, then the orders of court of appeal is in error.

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[7] Projecting that the law protects only the female population, lack of opportunity for opposing sides to present their argument, etc.

[8] A. The female comparator was totally unqualified and, B. The position advertisement did not ask for a specific degree.

[9] Petitioner has several advanced technical degrees and has years of experience in teaching/ working in the technical and computer science fields. The female comparator had a M.S. degree in computer science, limited teaching/work experience and was openly unqualified.

On-the-job-performance, according to EEOC, is the most important deterministic factor for assessing EPA violations. It is not clear why the Courts decided not to consider this legally important factor. Needles to say that had district court's wrong directive not prevented Petitioner from gathering depositions, Petitioner could have proved, easily, that the female comparator was indeed incapable of performing her duties. Moreover, there was a real possibility for a jury trial, had the district court allowed opposing sides to exchange their arguments on this claim. With no opportunity to have a verbal argument or call witnesses, an appeal process cannot be a proper substitute for a jury trial.

REASONS FOR GRANTING THE WRIT
(Questions 4 and 5)

In this age where both sexes have to work, EPA does play a vital role in fair employment practices. The contradictory readings of EPA by the district court, the court of appeals and, EEOC leads to the conclusion that maybe the statement of the law is not clear. Thereby, in the light of the national implications of the questions the consideration and the guidance of the Supreme Court of the United States is of utmost importance.

Background for Questions 6A, 6B and, 7

Over a period of time, Petitioner sent letters informing Tennessee Board of Regents (TBR) about certain illegal activities at Tennessee State University (TSU). TBR is the supervisory organization to TSU. The letters were marked CONFIDENTIAL and were addressed to the director of TBR. Unfortunately, TBR engaged itself in the illegal act of secretly sharing the CONFIDENTIAL documents with TSU as they arrived. This illegal and repulsive act resulted in repeated and open retaliation by TSU against Petitioner. This cycle went on for years.

In his lawsuit, Petitioner claimed that the illegal sharing of the confidential documents and the resulting open retaliations that followed is nothing short of a conspiracy by TSU and TBR against Petitioner. Defendants claimed that TSU and TBR cannot be considered as two entities and one entity cannot conspire by itself.

Their argument is not valid. First, TSU and TBR are two independent entities working under the same umbrella. Second why is it not possible for individuals (say, director of TBR, president of TSU and a college dean) to conspire against Petitioner? Although TSU's motive to retaliate against Petitioner was undeniable and facts, indisputably, support Petitioner's claim, the Courts did not touch the subject or give Petitioner the benefit of doubt. Petitioner also claimed that he acted as a "Whistle Blower" and was punished instead of being rewarded! Defendants claimed that State of Tennessee does not honor the "Whistle Blower" law and labeled Petitioner's confidential documents public documents! Their argument contradicts all accepted norms of a social life.

Since there is, apparently, no direct law addressing the issue of secretly sharing a confidential document, Petitioner hinted to the court of appeals that maybe a violation of Copyright laws was applicable. After all, Petitioner was the author of the confidential documents and he, according to the Copyright laws, should have a total control over the distribution of the documents.

In summary, Petitioner's claims included "Conspiracy", violation of "Whistle Blower" laws and, violation of the "Copyright" laws. These claims, individually and collectively, apply to this case. Importantly, these violations resulted in TSU's repeated retaliations against Petitioner. At the end, the Courts ignored the issue and neither addressed the question of legality of "secret sharing of a confidential document". In effect, the Courts allowed TSU and TBR to get away with their illegal acts at the expense of Petitioner.

REASONS FOR GRANTING THE WRIT
(Questions 6A, 6B and, 7)

The broader implications of these questions, beyond this case, are clear. The Courts' refusal to address the legality of sharing a confidential document may be interpreted as giving a legal immunity to the action. Such implication can fundamentally jeopardize the trust in communication within the society. For example, imagine that an inventor shares specifics of his invention,

in confidence, with an organization. What if the organization had legal immunity to share inventor's intellectual property with others? Since there is, apparently, no direct law that addresses the question of legality of sharing a confidential document and because the Courts refused to offer an opinion, and in the light of the national implications of the question the opinion of the United States Supreme Court is of utmost importance.

Background for Question 8

The retaliatory means that university administrators have and use against faculty members are the rank and salary. Petitioner claimed that he was the subject of retaliations, in part, because his rank and his salary were both reduced from one year to the next. Defendants argued that Petitioner's rank was a misprint! The Courts accepted Defendants' simplistic argument without question! Question 8 bypasses the rank issue for now and concentrates on the clear and equally important salary issue. Petitioner presented copies of his employment contracts to show that in one year he was asked to work for about 8 months at a low salary of $34,000 and the next year he was asked to work for about 9 months for the same salary. Petitioner argued that a contract that forces one to work for an extra month without any extra pay is the same as a reduction in salary and claimed that he has been a victim of retaliation. All internationally accepted employment standards (laws) support Petitioner's argument. In fact, EEOC defines reduction of one's salary a form of retaliation. Accepting that Petitioner's salary was reduced would have opened the door for the retaliation claim. Although the facts are undisputable, district court accepted the clearly invalid argument of Defendants that the salary was the same! Petitioner then put his hopes for an impartial judgment in the court of appeals by asking, explicitly, for an opinion on the definition of salary as a function of "money paid" and "length of time worked". However, the court of appeals chose not to make any mention of the reduced salary issue. When a court, intentionally or otherwise, overlook or ignore a clear, important and, deterministic evidence, what can a person do?!

REASONS FOR GRANTING THE WRIT
(Question 8)

The national implications of this question beyond this case are clear. Imagine the extent of abuse if employers enjoy legal immunity to force employees to work for longer periods without pay. Either the employment laws are not clear on this issue or the Courts did a clear injustice to Petitioner by openly ignoring the evidence. This case may become a model for future references and therefore, in the light of question's important national implications, the opinion of Supreme Court of United States is vital.

Background for Question 9

In spring of 1999 Petitioner was informed in writing by TSU that he would not be an employee of the university after his contract ends in May 1999. In summer 1999 Petitioner applied for a faculty position advertised by TSU. The advertisement specified that the position was for the academic year at a minimum salary of 44,000. In August 1999 Petitioner received a telephone call to show up for work. Unlike normal organizations that contracts are signed on the first day of work, TSU offers contract after six weeks of work. In despite of a verbal stress (i.e. verbal contract) by the department of computer science, the contract that was offered to Petitioner, after six weeks of work, was for only one semester at a low salary of $17,000. Petitioner protested and eventually forced TSU to change the contract to an academic year contract. However, TSU refused to adjust the salary. Petitioner refused to sign the contract on the ground that the salary paid was not in line with the advertisement and that it was lower than his previous year's salary. This was the latest in a series of open retaliations by TSU against Petitioner that resulted in Petitioner filing his lawsuit.

Internationally accepted employment standards, clearly, define TSU's action as an illegal employment practice. The question of legality of advertising for a position and hiring people only to pay them less than the advertised salary was posed to the Courts. The district court in its summary judgment, shockingly, blames Petitioner for not signing the contract and the court of appeals did not offer any opinion. The controversial opinion of the

district court and the refusal of the court of appeals to offer an opinion introduces the element of contradictions.

REASONS FOR GRANTING THE WRIT
(Question 9)

The national implications of this question are clear. Do employers have legal immunity to advertise offering a minimum salary, hire people, put them to work for six weeks, and then refuse to pay them even the minimum? (By some definition this is called "slavery"). Doesn't that cause chaos in the society's order? Again, either employment laws are not clear here or, the Courts ignored a clear violation of Petitioner's rights. The opinion of the Supreme Court thereby is crucial to assert that indeed such action is illegal and that the lower courts must offer punishment not ignorance.

Conclusions

In the case of Vazin v. TSU et al., clearly, injustices were done and laws were broken. Repeated and the shear number of open retaliations by TSU against Petitioner is more than enough to convince any impartial person that the case deserves a jury trial. Unfortunately, because of the apparent immunity of TSU to prosecution, the case was thrown out of the Courts. There is simply no other explanation why the Courts chose to overlook the deterministic evidences.

Questions Presented are legal, logical, important, have national implications and, are the results of, apparent, shortcomings in the system.

All members of the society (even those without a legal representation) have equal rights when it comes to justice. There is only one judicial system in the society. It is hoped that at the end the truth will prevail.

Respectfully Submitted,

H.V 11/4/02

Hassan Vazin

Appendix A

A copy of the order by Court of Appeals for the Sixth Circuit.

No. 01-6357

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HASSAN VAZIN	)	
	)	
Plaintiff-Appellant	)	
	)	
	)	
v.	)	ORDER
	)	
	)	
TENNESSEE STATE UNIVERSITY; TENNESSEE BOARD OF REGENTS,	)	
	)	
	)	
	)	
Defendants-Appellees.	)	

FILED: June 14, 2002, LEONARD GREEN, CLERK

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: MARTIN, Chief Circuit Judge; KEITH and KENNEDY, Circuit Judges.

Hassan Vazin, a Tennessee litigant proceeding pro se, appeals a district court judgment dismissing his civil right complaint filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Named as the defendants are Tennessee State University ("TSU"), his former employer and the Tennessee Board of Regents ("TBR"), TSU's governing agency. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed Fed. R. App. P. 34(a).

The facts underlying this lawsuit are adequately set forth in the district court's memorandum entered September 10, 2001, and will not be repeated herein. Suffice it to say that TSU employed Vazin as a temporary and non-tenured assistant professor in its Computer Science Department. On September 25, 1998, TSU issues a "Position Announcement" for a tenure track position in its Computer Science Department at the rank of assistant professor. The "Position Announcement" reflected a minimum qualification as master's degree in computer science. Vazin does not possess a master's degree in computer science. Nonetheless, Vazin applied for the announced tenure track position, but was not selected. Vazin filed his complaint alleging discrimination based on race and national origin by virtue of his non-selection for the tenure track position, demotion in his term position, and payment of a salary for less than the amount advertised for the position. Vazin was allowed to amend the complaint to add a claim under the Equal Pay Act, 29 U.S.C. § 216(b) ("EPA"). After a period of discovery, the defendants moved for summary judgment. The district court granted summary judgment to the defendants. This appeal followed.

Upon review, we concluded that summary judgment for the defendants was proper, as there is no genuine issue of material fact, and they are entitled to judgment as a matter of law. *See*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242,247(1986). Vazin's claim for alleged discrimination acts occurring before July 7, 1999 is barred by Title VII's statute of limitations. See 42 U.S.C. § 2000e-5(e)(1); *Brown v. Crowe*, 963 F.2d 895,896 (6th Cir. 1992). Vazin fails to establish a prime facie case of intentional discrimination with regard to his non-selection for a tenure track position in the Department of Computer Science, and his demotion claim. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792,802 (1973); *Thurman v. Yellow Freight Sys., Inc.*, 90 F.3d 1160,1166 (6th Cir. 1996); *Talley v. Bravo Pitino Rest., Ltd.*, 61 F.3d 1241,1246 (6th Cir. 1995). Further, the record establishes that the difference in pay between Vazin and Gita Jones was based on "any factor other than sex," specifically the difference in their educational qualifications. *See 29 U.S.C.§ 206(d)(1); Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974). Moreover, while Vazin cited the demotion as the retaliatory act to support his retaliation claim, Vazin was never actually as associate professor, but was always an assistant professor. Thus, Vazin cannot establish a prima facie case of retaliation. *See Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1080 (6th Cir. 1999). Finally, Vazin fails to state an actionable claim that False Claims Act, 31 U.S.C. § 3730.

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

"s/Leonard Green"
Clerk

APENDIX B

Copy of the order by District Court of Middle Tennessee (Nashville)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILEE DIVISION

HASSAN VAZIN	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 3:00-0477
	)	JUDGE HAYNES
	)	
TENNESSEE STATE UNIVERSITY and TENNESSEE BOARD OF REGENTS,	)	
	)	
	)	
Defendants.	)	

ORDER

In accordance with the memorandum filed herewith, the Defendants' motion to dismiss and/or for summary judgment (Docket Entry No. 10) is **GRANTED**. Plaintiff's motion for summary and to deny the Defendants' motion (Docket Entry No. 12) is **DENIED**. This action is **DISMISSED** with prejudice. Any appeal of this order would not be in good faith as required by 28 U.S.C. § 1915(a)(3).

This order constitutes the Final Order in this action

It is so **ORDERED**.

ENTERED this the 9th day of September, 2001.

"s/WILLIAM J. HAYNES"
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILEE DIVISION

HASSAN VAZIN	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	No. 3:00-0477
	)	JUDGE HAYNES
	)	
TENNESSEE STATE UNIVERSITY and TENNESSEE BOARD OF REGENTS,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM

Plaintiff, Hassan Vazin, filed this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. against the Defendants Tennessee State University ("TSU"), his former employer and the Tennessee Board of Regents ("TBR"), TSU's governing agency. Plaintiff alleges discrimination based upon his race and national origin by virtue of his demotion and payment of a salary for less than the amount advertised for the position. The Plaintiff was allowed to amend his complaint to add a claim under the Equal Pay Act, 29 U.S.C. § 29 U.S.C. § 216(b). (Docket Entry No. 16). The parties have engaged in discovery.

Before the court is the Defendants' motion to dismiss and or for summary judgment (Docket Entry No.10), contending that plaintiff's claims are time barred and also that plaintiff has failed to establish a prima facie showing of discrimination on any grounds. Plaintiff has filed a response that includes his correspondence with the Defendants and other related papers. (Docket entry No.12 and Attachments thereto).

For the reasons stated below, the court concludes that the Plaintiff has not submitted proof to support a judgment of employment discrimination based upon his race or national origin nor any of his other claims. Thus, the Defendants' motion to dismiss and/or for summary judgment should be granted.

A. FINDING OF FACT[1]

Defendant TSU employed Plaintiff as a temporary and non-tenured professor in its Computer Science Department at a salary of $4250.00 per month for the period August 17, 1998 to December 16, 1998, i.e., $17,000.00 for the Fall 1998 semester. (Docket Entry 11, Attachment thereto, Wade Affidavit at A-4 and 5). Although Plaintiff's contract for the Fall 1998 term listed his rank as associate professor, id. at A-4 and A-5, his temporary appointment paper reflected that this position was an assistant professor position. id. at A 2-3.

On September 25, 1998, TSU issued a "Position Announcement" for a tenure track position in its Computer Science Department at the rank of assistant professor.[2] Id. The "Position

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[1] Upon a motion for summary judgment, the factual contentions are viewed in the light most favorable to the party opposing the motion for summary judgment. Duchon V. Cajon Co., 791 f.2d 43,46 (6th cir. 1986) app. 840 f.2d 16 (6th Cir. 1988)(unpublished opinion). As will be discussed infra, under recent Supreme Court holdings, upon the filing of a motion for summary judgment, the opposing party must come forth with sufficient evidence to withstand a motion for directed verdict, Anderson v. Liberty Lobby, 477 U.S. 242, 247-52, 106 S.Ct. 2502, 91 L.Ed.2d 202 (1986), particularly where there has been an opportunity for discovery. Celotex Corp. V. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265,276 (1986). The Court concludes that there are not any material factual disputes, thus, this section constitutes a finding of facts under Fed. R.Civ.P. 56(d).

[2] On November 3, 1997,TSU issued a similar "Position Announcement" for a tenure track position in its Computer Science Department. Id. at A-28. the position announcement in 1997 also listed a master's degree in computer science as a minimum qualification. Id. In the Spring of 1998, Dean Lovett recommended Dr. Suthaharan, an Asian American with a Ph.D. in computer science for appointment to the position announced in 1997. Id. at A-27. Dr. Suthaharan began his employment with TSU in August, 1998 Id.

Announcement" reflected a minimum qualification as master's degree in computer science. Id. Plaintiff does not possess a master's degree in computer science. Id. at A-1. Nonetheless, Plaintiff applied for the announced tenure track position, but was not selected.

On December 14, 1998, Dr. Bobby Lovett, Dean of the College of Art and Sciences at TSU, recommended Dr. Edey Eyoh, a Nigerain national, for the tenure track position sought by Plaintiff. Id. at A-20. Dr. Eyoh has a doctorate in computer science. Id. at A-17. Dr. Eyoh began his employment at TSU on January 4, 1999, and on January 21, 1999, Dr. Eyoh signed a "Notice of Tenure-Track Appointment and Agreement of Employment for Faculty." Id. at A-21-22. At the time Dr. Eyoh began his employment, Plaintiff was still employed as a term professor in TSU's Computer Science Department for the spring 1999 semester. Id. at A-7.

In August 1999, TSU offered Plaintiff another contract at the same salary as his previous term contracts, $4250.00 per month (or $17,000.00 per semester), but with the correct, approved rank of assistant professor in his contract. Id. at A-10-11. Plaintiff protested that he has been promised a contract for both the Fall 1999 and Spring 2000 semesters. TSU responded by offering to include both the Fall 1999 and Spring 2000 semesters in his contract. Id. at A-12. the salary for the two semesters was $34,000.00 ($17,000.00 for each semester) as in the prior year. Id. at A-14. On two forms, Plaintiff's salary for the Fall 1999 and Spring 2000 semesters was listed as $2833.33 per month which is $34,000 per year rather than $4250 per month for 8 months which is also $34,000.00 as it should have been and as in the previous year. Id. at A-13,14.

On September 28, 1999, approximately six weeks into the Fall 1999 semester, Plaintiff sent a memorandum to Dr. Lovett, that he would no longer teach his classes, citing the TSU's failure to offer him a year long contract. Id. A-15. TSU agreed to the requested year long contract, but Plaintiff stated that he wanted a salary in the "acceptable range" before he would return to work.

Id. In his September 28, 1999 memorandum, Plaintiff referred to the "academic year contract" of people who were hired during the 1998-99 year and that he was not being paid a salary in the acceptable range as a reason for his decision not to teach his classes. Id. A-15. Plaintiff makes no reference to rank in his memorandum to Dr. Lovett. Id.

TSU accepted Plaintiff's September 28, 1999, resignation. For the Fall 1998 semester, TSU hired Gita V. Jones (Rangaranjan), an Asian-American, to a 9 month in its Computer Science Department at a salary of $37,740.00 Id. at A-24 and 25. Unlike Plaintiff, MS. Jones has a master's degree in computer science. Id. at A-23.

On December 14, 1999,Plaitiff filed Charge No. 253A00228 ("charge") with the Equal Employment Opportunity Commission ("EEOC"). (Ex. 1, attached hereto). In his charge, Plaintiff asserts that he was denied a tenure track position and demoted from associate professor to assistant professor because of his race and/or national origin. (Ex. 1, attached hereto). On February 23, 2000, the EEOC issued to Plaintiff a "Dismissal and Notice of Rights," i.e., a right to sue letter. (Docket Entry 1, attachment).

B. CONCLUSIONS OF LAW

" The very reason of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Advisory Committee Notes on Rule 56, Federal Civil Judicial Procedure and Rules (West Ed. 1989). Moreover, "district courts are widely acknowledged to possess the power to enter summery judgment sua sponte, so long as the opposing party was on notice that she had to come forward with all of her evidence." Celotex Corp. V. Catrett, 477 U.S. 317, 326, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Accord, Routman v. Automatic Data Processing, Inc. 873 F.2d 970, 971 (6th Cir. 1989).

In Anderson V. Liberty, Inc,. 477 U.S. 242, 106 S.Ct. 2505,91 L.Ed.2d 202(1986), the United States Supreme Court explained the nature of a motion for summary judgment:

> Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment 'shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.
>
> As to materiality, the substantive law will identify which facts are material. Only dispute over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

477 U.S. at 247-48 (emphasis in the original and added in part). Earlier the Supreme Court defined a material fact for Rule 56 purposes as "[w]here the record taken as a whole could not lead to a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial." Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct.,1348, 1356, 89 L.Ed.2d 538(1986)(citations Omitted).

A motion for summary judgment is to be considered after adequate time for discovery. Celotex Corp v. Catrett, 477 U.S. 317, 326, 106 S.Ct.2548,91 L.Ed.2d 265(1986). Where there has been a reasonable opportunity for discovery, the party opposing the motion must make an affirmative showing of the need for additional discovery after the filing of a motion for summary judgment. Emmons v. McLaughlin, 874 F.2d 351,355-57 (6thCir. 1989). But see Routman v. Automatic Data Processing, Inc., 873 F.2d 970,971 (6thCir. 1989).

There is a certain framework in considering a summary judgment motion as to the required showing of the respective parties as described by the Court in Celotex.

> Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affirmative, if any, " which it believes demonstrate the absence of genuine issue of material fact... [w]e find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim.

Celotex, 477 U.S. at 323 (emphasis deleted).

As the Court of Appeals explained, "[t]he moving party bears the burden of satisfying Rule 56(c) standard." Martine v. Kelley, 803 F.2d 236,239,n.4(6th Cir. 1986). The moving party's burden is to show "clearly and convincingly" the absence of any genuine issues of material fact. Sims v. Memphis Processor, Inc., 926 F.2d 524, 526 (6th Cir. 1991)(quoting Kochins v. Linden-Alimak, Inc., 799 F.2d 1128, 1133 (6th Cir., 1986)). "So long as the movant has met its initial burden of 'demonstrating the absence of a genuine issue of material fact' then nonmoving party then must set forth specific facts showing that there is a genuine issue for trial.'" Emmons v. McLaughlin, 874 F.2d 351,353(6th Cir., 1989)(quoting Celotex and Rule 56(e)).

Once the moving party meets its initial burden, the court of Appeals warned that "[t]he respondent must adduce more than a scintilla of evidence to overcome the motion [and]... must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989)(quoting Liberty Lobby). Moreover, the court of Appeals explained that

> The respondent must 'do more than simply show that there is some metaphysical doubt as to the material facts.' Further, '[w]here the record taken as a whole could not lead a rational trier of facts to find 'for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent's claim is 'implausible.'

Street, 866 F.2d at 1480 (cites omitted). See also Hutt v. Gibson Fiber Glass Products, No. 89-5731 (6th Cir. filed September 19, 1990) ("A court deciding a motion for summary judgment must determine 'whether the evidence presented a sufficient disagreement to require a submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Quoting Liberty Libby)).

If both parties make their respective showing, the Court then determines if the material factual dispute is genuine, applying the governing law.

> More important for present purpose, summary judgment will not lie if the dispute about material fact is 'genuine' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

* * *

> Progressing to the specific issue in this case, we are convinced that the inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily implicates the substantive evidentiary standards or proof that would apply at the trial on the merits. If the defendant in a run-of-the-mill civil case moves for summary judgment or for directed verdict based on the lack of proof of a material fact, the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of scintilla of evidence in support of the plaintiff's position will

> be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict—' whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed'.

Liberty Lobby, 477 U.S. at 248,252, 106 S.Ct. 2505,91 L.Ed.2d at 211-212,214(citation omitted and emphasis added).

It is likewise true that

> [I]n ruling on a motion for summary judgment, the court must construe the evidence in its most favorable light in favor of the party opposing the motion and against the movant. Further, the papers supporting the movant are closely scrutinized, whereas the opponent's are indulgingly treated. It has been stated that: 'The purpose of the hearing on the motion for such a judgment is not to resolve factual issues. It is to determine whether there is any genuine issue of material fact in dispute…'

Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425,427 (6th Cir. 1962)(citation Omitted). As the Court of Appeals stated, "[a]ll facts and inferences to be drawn therefrom must be read in a light most favorable to the party opposing the motion." Duchon v. Cajon Company. 791 F.2d.43, 46(6th Cir. 1986) app, 840 F.2d 16 (6th Cir.1988)(unpublished opinion)(citation omitted).

The Court of Appeals further explained the District Court's role in evaluating the proof on a summary judgment motion.

> A district court is not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim. Rule 56 contemplates a limited marshaling of

> evidence by the nonmoving party sufficient to establishing a genuine issue of material fact for trial. This marshaling of evidence, however, does not require the nonmoving party to "designate" facts by citing specific page numbers. Designate means simply "to point out the location of". Webster's Third New international Dictionary (1986).
>
> Of course, the designated portion of the record must be presented with enough specificity that the district court can readily identify the facts upon which the nonmoving party relies; but that need for specificity must be balanced against a party's need to be fairly appraised of how much specificity the district court requires. This notice can be adequately accomplished through a local court rule or a pretrial order.

InterRoval Corp. v. Sponseller, 889 F.2d 108, 111(6th Cir. 1989) cert. denied 110 S.Ct.1839, 108 L.Ed.2d 967(1990). Here, the parties have given some references to the proof upon which they rely. Local Rule 8(b)(7)(A) and(C) require a showing of undisputed and disputed facts.

In Street, the Court of appeals discussed the trilogy of leading Supreme Court decisions, and other authorities on summary judgment and synthesized ten rules in the "new era" on summary judgment motions

1. Complex cases are not necessarily inappropriate for summary judgment.

2. Cases involving state of mind issues are not necessarily inappropriate for summary judgment.

3. The movant must meet the initial burden of showing 'the absence of a genuine issue of material facts' as to an essential element of the non-movant's case.

4. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity

for discovery, has no evidence to support an essential element of his or her case.

5. A court should apply a federal directed verdict standard in ruling on a motion for summary judgment. The inquiry on a summary judgment motion or a directed verdict motion is the same: 'whether the evidence presented a sufficient disagreement to require submission to a jury or whether it is so one-sided that the party must prevail as a matter of law.'

6. As on federal directive verdict motions, the 'scintilla rule' applies, i.e., the respondent must adduce more than a scintilla of evidence to overcome the motion.

7. The substantive law governing the case will determine what issues of fact are material, and any heightened burden of proof required by the substantive law for an element of respondent's case, such as proof by clear and convincing evidence, must be satisfied by the respondent.

8. The respondent cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.

9. The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.

10. The trial court has more discretion than in the 'old era' in evaluating the respondent's evidence. The respondent must 'do more than simply show that there is some metaphysical doubt as to the material facts.' Further, '[w]here the record taken as a whole could not lead a rational trier of facts to find' for the respondent. The motion should be granted. The trial court has at

> least some discretion to determine whether the respondent's claim is 'implausible.

Street, 866 F.2d at 1479-80.

The Court has distilled from these collective holding four issues that are to be addressed upon a motion for summary judgment: (1) has the moving party "clearly And convincingly" established the absence of material facts?; (2) if so, does the plaintiff present sufficient facts to establish all the elements of the asserted claim or defense?; (3) if factual support is presented by the nonmoving party, are those facts sufficiently plausible to support a jury verdict or judgment under the plausible law?; and (4) are there any genuine factual issues with respect to those material fact under the governing law?

As to the Defendants statute of limitation contention, Tennessee is a deferral state under Title VII that requires a plaintiff to file a charge of discrimination within 300 days of the alleged discrimination act with the state agency. 42 U.S. C.§ 2000e –5(e). in a deferral state, plaintiff must file a charge with the appropriate state agency, i.e. the Tennessee Human Rights Commission. See Johnson v. East Tennessee State University, 2000 WL 1182792 (6th Cir. 2000).

Plaintiff cited alleged discriminatory acts by Defendants as early as 1989 and claims damages for ten (10) year period. (Docket Entry 1, 9, prayer for Relief, and –"A brief statement of facts"). Plaintiff filed his EEOC charge on December 14, 1999, but neither his charge nor his charge information form reflected that he filed a charge(s) with the Tennessee Human Rights Commission. As noted above, Plaintiff was under a term contract with TSU's Computer Science Department on January 4, 1999 and thereafter plaintiff had noticed that Dr. Eyoh had been hired for the tenure track position well in advance of either the 180 or 300 day limitation periods. Thus, plaintiff's claim for this alleged discriminatory act occurring more than 180 days or 300 days prior to the filing of his EEOC is time barred by Title VII's statute of limitations.

- In his EEOC paper, Plaintiff cites an alleged demotion in his term position that occurred in September 1999 as well as discrimination on pay for that time. These acts involved two totally distinct employment decisions than the earlier claim. In an attachment, Plaintiff alludes to his alleged demotion as retaliation, but fails to specify why the alleged demotion was deemed retaliatory. Moreover, Plaintiff does not allege retaliation on either his EEOC charge or his EEO charge information form. Such claims are within the Title VII limitation period.

As to Plaintiff's claims that are untimely or deemed timely filed, Plaintiff's proof does not establish a prima facie case of intentional discrimination. Plaintiff must establish each element of the prima facie case or Plaintiff's complaint must be dismissed. Wixson v. Dowagiace Nursing Home, 87 F.3d 164, 169 (6thcir. 1996); Gafford v. General Electric Company, 997 F.2d 150,168 (6th Cir. 1993).

To establish the required prima facie case of racial and /or national origin discrimination based upon the denial of a tenure track position, i.e. a failure to hire, Plaintiff must establish that: (1) he is a member of a protected class; (2) he applied and was qualified for the position; (3) he suffered an adverse employment decision. i.e. he was considered for and denied the position; and (4) he was treated differently than similar situated non-protected individuals, i.e. similarly non-protected individuals received tenure track positions." Thurman v. Yellow Fright System. Inc., 90 F.3d 1160, 1166 (6thCir. 1996). For a discriminatory discharge claim, Plaintiff must establish a lack of cause for his termination. Potter v. Goodwill Industries of Clevland, 518 F.2d 864, 865 (6thCir. 1975).

Plaintiff is a member of a protected class and was considered for and denied the tenure track position. Plaintiff, however, cannot establish that he was qualified for a tenure track position nor that employee of similar qualifications who were not members of the protected class received tenure track positions. Plaintiff applied for a tenure track position in the Department of Computer Science at TSU. As noted above, however, Plaintiff

lacked a master's degree in computer science, that was required for the tenure track position.

Plaintiff also cannot establish that he was similarly situated to an individual in the non-protected group who received the tenure track position. To be considered similarly situated with other individuals under Title VII, Plaintiff must show that he and other individuals were similar in all relevant respects. Ercegovich v. Goodyear Tire and Rubber Company, 154 F.3d 344,352 (6th Cir. 1998). The individuals who were offered tenure track positions in the Computer Science Department at TSU, Dr. Suthaharan and Dr. Eyoh, had the required master's degree in computer science. Because Plaintiff cannot establish that he was qualified for a tenure track position in the Computer Science Department at TSU, the Court concluded that Plaintiff has not presented sufficient proof for a prima facie showing of intentional discrimination. Moreover, given that the Plaintiff failed to attend his classes, there was cause for nonselection.

As to Plaintiff's demotion claim, in August 1998, the Dean of TSU's College of Arts and Sciences, Dr. Bobby Lovett, completed the required "University Position Requisition" for a term position in TSU's Computer Science Department for the Fall 1998 semester. Id. at A-2. Dean Lovett completed a similar "University Position Requisition" in December 1998, for the Spring 1999 semester. Id. at A-6. Both of the noted requisitions listed the rank for the term position as "Assistant Professor" and listed the recommended salary at $17,000.00 per semester. Plaintiff accepted appointment to both requisitioned term positions and signed contracts that incorrectly listed the term position at the unapproved rank of associate professor. Id. at A-4 and 5. Plaintiff 's salary for the term position, however, was correctly listed at the recommended $17,000.00 per semester. Id. For the Fall semester in September 1999. TSU offered Plaintiff a contract for another term position that correctly listed his rank at the approved rank of assistant professor and continued his salary at $17,000.00 for the Fall 1999 semester, Id. at A-4 and 5.

Plaintiff's demotion claim is that TSU's corrected description of the rank for his position is an adverse employment action. While a demotion is generally considered an adverse employment action, Kocsis v. Multi-Care Management, Inc., 97 F.3d 876,884-87 (6th Cir. 1996), there must be some "materially adverse" consequence on the plaintiff. Id. at 887 (noting that a change in plaintiff's job title without evidence that the change created a loss of prestige with her peers or some other material change was not an adverse employment action). Plaintiff has not alleged any loss of prestige nor identified a material adverse change in benefits of his term position such as a decrease in responsibilities, duties, or salaries under the Fall 1999 semester contract. At best, Plaintiff was a victim of a clerical error, nor an adverse employment action.

As to his claim of retaliation, there are not any facts that are presented that would support a judgment on that claim. While Plaintiff cites the demotion as the retaliatory act, Plaintiff was never actually an associate professor, but was always an assistant professor.

Finally, after a review of the record, the Plaintiff's motion to add a Equal Pay Act ("EPA") claim was granted, but the facts clearly show that claim to be without merit. The EPA was intended to protect female employees. Bence v. Detriot Health Corp., 712 F. 2d 1024, 1028 (6th Cir. 1983).

Further, the alleged sharing of information among the Defendants his employer, TSU and its governing board, TBR, that fact does not state an actionable claim and does not state a False Claims Act claim under 31 U.S.C. § 3730.

For the reasons stated above, the Defendants' motion to dismiss and/or summary judgment should be granted. Plaintiff's motion for judgment and motion to deny the Defendants' motion should be denied.

An appropriate Order is filed herewith.
Entered this the 9th day of September, 2001

"s/WILLIAM J. HAYNES, JR."
United States District Judge.

APPENDIX C

The following comparison was submitted to the court of appeals to show how the pendulum of justice can swing from one to other side depending on whose version of the events a court chooses to believe.

Scenario 1 (Claimed by Defendants and accepted by District Court):

In **August 1999,** Defendant TSU offered Plaintiff a $17,000 contract for the Fall semester of 1999.
Plaintiff accepted the offer and agreed to work on semester-by-semester basis.
Plaintiff waited 6 weeks before taking TSU as hostage[1] demanding an academic year contract.
TSU agreed and offered Plaintiff an academic year contract.
Plaintiff rejected the academic year contract and asked for a higher salary.
TSU refused to offer a higher salary and Plaintiff resigned.

Clearly, the above sequence of events paints Plaintiff as an irresponsible faculty who first agrees to terms of a contract and then waits 6 weeks before leaving his classes and demanding changes in the contract.

It is important to note that neither Defendants nor the summary judgment have made any reference to the fact that Plaintiff was an applicant for the mentioned 1999-2000 advertised faculty position.

Scenario 2 (Claimed by Plaintiff, supported by evidence and, are absolute and **provable** truth):

There were absolutely no talk or offering of any contract in August 1999[2].

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[1] An exact word used in Defendants' claim.
[2] Unlike normal organizations where an employee signs a contract before starting to work, TSU offers a contract 6 weeks after the semester starts!

The only contract discussion were conducted, in **September 1999**, through Dr. Suthaharan (then, the acting department head) during which Dr. Suthaharan stressed TSU's agreement to an academic year contract for Plaintiff[3].

Six weeks into the semester, when it was time to sign the contract, TSU, shamelessly, refused to honor the agreement and flatly rejected offering Plaintiff an academic year contract. (Also see (N) please).

Dr. Lovett (dean of college), in a telephone conversation with Plaintiff, directly denied any agreement by TSU for an academic year contract and gave the "take it or leave it" (referring to a semester contract) choice to Plaintiff. TSU's dictatorial attitude did not leave any possibility for an intellectual discussion.

TSU's refusal to honor the promised contract caused sever stresses for Plaintiff and forced him to stand up for his rights. Plaintiff asked that TSU honor the agreement and offer an academic year contract in line with Plaintiff's experiences and the position advertisement.

TSU continued to reject honoring the "academic year contract" agreement.

All faculty members and students supported Plaintiff and expressed their anger over the outrageously unfair treatment.

TSU's plan was to force Plaintiff out and they made remarks to the effect. Hence, TSU tried to force other computer science faculty members to teach Plaintiff's courses.

Computer science faculty members, citing that they were already overloaded, refused to accept teaching Plaintiff's courses.

Eventually, TSU was forced and reluctantly agreed to an academic year contract for Plaintiff.

The academic year contract obligated Plaintiff to work for 9 months at a low salary of only $34,000. Further, Plaintiff's rank was lowered in the contract.

Plaintiff objected to the terms of the contract arguing that not only his rank was lowered but also the salary was not in an acceptable range.

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[3] The Office of Equal Employment Opportunities at TSU wrote a letter confirming this fact (please see page 16). A copy of the letter was submitted to District Court.

TSU refused to adjust the contract and Plaintiff was forced out as TSU had planned.
TSU's strategy was indeed history in repeat and Plaintiff had every right to ask for adjustments before returning to his classes. In 1998-1999 academic year, TSU tried the same shameful cheating tactic on Plaintiff. First, Plaintiff was lead to believe that his contract would be an academic year contract at a salary of $37,500. However, 6 weeks into the semester when Plaintiff was called to sign the contract he was shocked to see that the contract was for only one semester at a low salary of only $17,000 and without any fringe benefits. In his confidential complaint letter to TBR's director Plaintiff pointed to the shameful tactic and specified that he signed that contract only because he was in a desperate need of money to market his Computational Arts and his inventions (i.e. personal and private information. Please see page 19 also). Plaintiff never resigned his position. There is no document signed by Plaintiff in which Plaintiff expresses his desire to resign. Plaintiff simply asked for a fair treatment under the law. Plaintiff could not have continued to work without a contract. Signing the invalid contract would have made Plaintiff obligated to work under the sub-human conditions. Had TSU met its legal obligations to Plaintiff, at any time during the dispute, Plaintiff would have gone back to work.
Because Plaintiff was (is) overqualified for all other available jobs, TSU's illegal actions against Plaintiff, after educational institutions had already started, caused Plaintiff to be unemployed for over a year. TSU must compensate Plaintiff not only for causing severe stresses for him but also for causing his unemployment. Plaintiff outlined the extent of direct financial damages that he had endured and sent an invoice for his August 17, 1999- October 15, 1999 consulting services to TSU. TSU never paid the invoice. Instead, although the final letter from TSU arrived by mid-October 1999, TSU only paid Plaintiff through September 30, 1999. The payment was based on the low, illegal and, disputed $34,000 salary.

Consideration of the following important facts is essential in understanding this case even better. (I) Unlike normal organizations, TSU does not offer employment contract before the semester starts. The contract is offered 6 week after the semester

starts. (II) Before 1998-1999 academic year, Plaintiff worked at TSU as an adjunct professor for a couple of semesters. Plaintiff and another adjunct professor repeatedly asked TSU to adjust their rank to a higher level. TSU agreed every time, yet, did not take any action to correct their ranks. (III) In Fall 1998, after one of their faculty left, computer science department having confidence in Plaintiff's qualifications, asked Plaintiff to join the department. The vacant position was not advertised for. (IV) In 1999-2000 the position was advertised for and Plaintiff was an applicant.

Any fair-minded jury, after hearing this factual scenario2, can easily conclude that:
TSU is guilty of planning to get ride of Plaintiff.
TSU is guilty of an intentional breach of a contract.
TSU is guilty of causing undue stress for Plaintiff.
TSU is guilty of false advertising.
TSU is guilty of discrimination against Plaintiff.